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Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of the Commission's)
Rules to Provide Channel Exclusivity)
to Qualified Private Paging Systems)
at 929-930 MHz)

PR Docket No. 93-35

To: The Commission

PETITION FOR CLARIFICATION OR RECONSIDERATION

MAP Mobile Communications, Inc. ("MAP"), hereby petitions the Commission to clarify or reconsider certain aspects of its new rules offering channel exclusivity to qualified local, regional and national paging systems in the 929-930 MHz band.¹

I. INTRODUCTION AND SUMMARY

MAP commends the agency for the decision in this proceeding, as it will encourage the development of a competitive mobile communications marketplace to meet the paging needs of eligible users. Nevertheless, certain ambiguities in the rules may undermine this goal. First, the rules do not address whether applications that have been returned for correction or additional information may be included for the purpose of determining eligibility for

¹ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, Report and Order, FCC 93-479, released November 17, 1993 ("Report and Order").

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exclusivity. The Commission should allow entities to include these applications as long as they are resubmitted in a timely manner. To exclude such applications would prejudice entities that have committed extensive resources to construct and operate private carrier paging systems and would run counter to the spirit of the Commission's processing rules.

Second, the rules do not adequately specify the types of modifications that may be made to grandfathered facilities. Licensees should be allowed to modify facilities -- for example, to improve service or because of a loss of site lease -- so that they are able to maintain viable offerings.

Third, the rules do not outline the processing procedures for new applications. The agency should coordinate with the National Association of Business and Educational Radio ("NABER") and the industry to ensure that applications are processed in a manner that does not prejudice any party. To that end, the agency should ensure that applications are processed in the order they are submitted to NABER and in a fashion that does not unnecessarily create the need for competitive bidding.

Last, the rules should provide that the 1000 watt restriction on non-nationwide systems applies only to facilities that will encompass new service areas and that applicants may seek higher power facilities to operate within their existing service areas. This clarification is needed

to achieve parity with RCCs that currently operate higher power facilities.

Unless these four matters are addressed, the new rules will hamper the provision of quality service to subscribers and adversely affect licensees that have committed significant resources to the development and implementation of paging systems. Accordingly, MAP urges the agency to clarify its rules.

II. BACKGROUND

MAP Mobile Communications, Inc., entered into the communications service industry three years ago as a reseller of alphanumeric paging services and a provider of operator assistance services to paging companies. Since its inception, MAP has grown from a company with fewer than 10 employees to a company with over 600 employees offering competitive and innovative communications services.

Early in 1992, MAP decided to construct and operate its own system and applied for authorizations in the 929 MHz band to introduce new approaches to private carrier paging ("PCP") in the U.S. marketplace. During July of 1992, at about the same time it began receiving initial licenses to construct facilities, MAP also began negotiations with Metagram America Inc. ("Metagram") for the acquisition of Metagram's alphanumeric paging system. MAP, through its wholly-owned subsidiary MAP Paging Co., Inc., has now acquired most of

Metagram's authorizations and operates a nationwide system that meets the FCC's exclusivity requirements.

In addition, MAP has filed applications and constructed facilities to provide companion services on other frequencies that also qualify for exclusivity. Most of these applications have been granted, but several remain pending.

**III. CLARIFICATION IS REQUIRED TO ENSURE THE
CONTINUED QUALITY OF EXISTING PCP SERVICES**

**A. The Commission Has Properly Recognized
That its New Rules Should Accommodate
Existing Licensees**

MAP agrees with the Commission's conclusions in this proceeding that it "is essential to protect the interests of existing licensees"² and that "a preference [sh]ould be granted in favor of expanding the existing system."³ Any other position, as the agency has appropriately acknowledged, could impair the ability of some PCP operators to develop or expand their systems, thereby "inadvertently stranding investment in ongoing projects while delaying the ultimate provision of paging service to prospective customers."⁴

² Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, Notice of Proposed Rulemaking, 8 FCC Rcd 2227 (1993) ("NPRM") at 2232-33, ¶ 36.

³ Id. at 2233, ¶ 37.

⁴ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, Order, 8 FCC Rcd. 2460, at ¶ 2 (1993).

Moreover, any interpretation of the rules that does not recognize existing licensees would be inequitable, as it would penalize licensees that have a proven record of actual construction and operation in the public interest.

B. The Agency Should Allow Entities To Include Resubmitted Applications in Determining Exclusivity

MAP urges the agency to clarify its rules regarding the status of applications that are resubmitted after being returned for correction or additional information. It is the Private Radio Bureau's standard practice to return an application to the applicant when it has a question, such as when it requires evidence of FAA approval or requests a correction to elevations or heights. Rather than simply send a letter to the applicant requesting information, the Bureau will return the original filing with an "Application Return Notice" and provide the applicant 60 days to file an amendment or make a correction without losing its original position in the processing line.⁵ Nor does the application lose its status as a "pending" application.⁶ In some cases, the application is returned to NABER, and the applicant does

⁵ See generally 47 C.F.R. §§ 1.959, 90.141.

⁶ Id. Indeed, this approach is consistent with the manner applications are treated by other FCC licensing divisions, although other divisions do not physically return the actual applications.

not learn about the matter until NABER resubmits the application to the FCC.

MAP respectfully asks the agency to clarify that it will allow licensees to include in the determination of their eligibility for exclusivity timely filed applications that have been returned and then resubmitted in accordance with §§ 1.959 and 90.141 of the rules. In essence, the agency should clarify that licensees may consider applications initially filed on or before October 14, 1993, and that their eligibility is not affected by the need for NABER or the applicant to respond to an "Application Return Notice," provided the application is returned in a timely fashion. Applicants that have committed extensive resources to construct and operate systems should not now be prejudiced by the exclusion of such applications.

**C. The Commission Should Define the Types
of Modifications that May Be Made to
Grandfathered Facilities**

MAP also asks the Commission to clarify the rights of grandfathered licensees to modify their facilities so that they may ensure viable service offerings. The rules should not be interpreted to hamper the ability of existing licensees to respond to customer requirements that may not have matched the reality of business conditions when the facilities were authorized initially, or to improve the technical aspects of their services, or to adjust to business

changes, such as a loss of a site lease. Indeed, the Commission noted that it is appropriate to accommodate licensees who are already operating systems and have made investments.⁷

To that end, MAP recommends that the agency specify that the following modifications may be made by grandfathered licensees:

- Change in the number of paging receivers
- Change in type of emission
- Change in antenna height
- Change in power from that authorized
- Change in class of station
- Change in ownership, control or corporate structure
- Change in location of existing facilities

The ability to make these changes is critical to the continued provision of service to subscribers.

D. The FCC Should Outline Processing Procedures That Ensure Fair Treatment of All Applicants

MAP recommends that the FCC adopt specific procedures applicable to this band to avoid the confusion and conflict that could occur once NABER and the FCC re-initiate the processing of new 929 MHz applications. MAP is confident that NABER will take steps to treat all applicants fairly and equitably. Nevertheless, the agency should outline certain principles and procedures that NABER should implement to

⁷ NPRM, at 2233, ¶ 35.

avoid the possibility of protracted litigation that may delay the provision of service in the public interest.

Specifically, all applications should be coordinated in the order they were delivered to NABER's offices, regardless of the actual date NABER re-commences coordination. NABER should not consider all applications filed after October 14, 1993, as having been filed on the same date it begins processing again. Otherwise, applications that were not mutually exclusive when filed at NABER may become so, thereby subjecting applicants to competitive bidding or hearing processes that could delay the provision of service to subscribers.

Moreover, NABER should be directed to advise licensees of applications affecting their operations and provide an adequate opportunity for these licensees to comment on such applications before coordination is completed. Advance notification will offer existing, grandfathered and new applicants the ability to discuss and resolve potential conflicts before the matter is raised at the Commission. As a result, industry and FCC resources can be devoted to the resolution of the matter rather than to litigation.

In addition, preference should be offered to existing licensees whether or not there are competing applications. A new applicant should not be coordinated in a new area on a channel with co-channel facilities within an appropriate distance, such as 107 miles, unless no other channels are

available.⁸ Implementation of this principle will assure that local and regional systems have flexibility to expand their systems as the need arises.

E. PCP Operators Should Be Subject to the Same Height/Power Limits Applicable to RCCs

In the Report and Order, the FCC declined to grant most PCP operators the flexibility to operate at higher power and limited all but nationwide licensees to 1000 watts effective radiated power. The agency fears that granting such an option would diminish opportunities for new entry.⁹

MAP urges the agency to clarify that the 1000 watt restriction applies only to applications for facilities that will encompass new service areas and that applications seeking higher power facilities to operate within existing service areas are permitted.

Such clarification is consistent with the underlying purpose of the FCC's restriction to permit new entry and to maintain appropriate co-channel separation yet at the same time provides needed parity with radio common carriers ("RCCs") to improve facilities operating within the contours of existing systems. Indeed, the Commission acknowledges in

⁸ See generally 47 C.F.R. 22.503 (d) (1992) (separation for Class G to Class H facilities). If no other channels are available, NABER should advise the existing licensee of the proposed coordination and allow the licensee an advance opportunity to comment.

⁹ Report and Order, at ¶ 19.

its Report and Order that RCCs "operate at 3500 watts within pre-existing service areas" ¹⁰ PCPs have the identical need and interest as RCCs in operating higher power facilities and should be granted the same privilege. ¹¹

¹⁰ Report and Order, at ¶ 18 (citing Height and Power Increases in the Public Mobile Service, 4 FCC Rcd. 5303 (1989), modified on recon., 5 FCC Rcd. 4604 (1990)).

¹¹ Moreover, if the agency decides to allow RCCs to operate at 3500 watts outside their pre-existing service areas, this same relief should also be extended to PCPs. See generally Height and Power Increases in the Public Mobile Service, Notice of Proposed Rulemaking, 8 FCC Rcd. 2796 (1993).

IV. CONCLUSION

For the foregoing reasons, MAP urges the Commission to clarify its rules as discussed above to accommodate existing licensees that are currently operating extensive paging systems.

Respectfully submitted,

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